Supreme Court, U.S.
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No. _____

In The

Supreme Court Of The United States

HAROLD R. STANLEY,
Petitioner

v.

THE HONORABLE JACK GRATE, ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an opposing party, opposing attorney, and a state court judge are liable for suit in a 42 U.S.C. § 1983 action when the complaint alleges and proves they proceeded in state court issuing a civil contempt arrest warrant after the state action was properly removed to federal court and before it was remanded, contrary to 28 U.S.C. § 1446 (d).

PARTIES TO PROCEEDING

Petitioner Harold Stanley is a former husband. Respondent, The Honorable Jack Grate was the presiding state court judge who issued a civil contempt arrest warrant in a state court proceeding after the action had been properly removed to federal court and before it was remanded. Marcia E. Stanley is a former wife and was the opposing party in the proceeding. Læs Wight, III, Esq. was Marcia Stanley's attorney in the proceeding.

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OPINIONS BELOW

The court of appeals order affirming without written opinion is printed in the Appendix ("App.") at A 2. The order denying the petition for rehearing *en banc* is at App. A 1.

JURISDICTION

On March 24, 2010, the court of appeals rendered judgment affirming the district court's orders dismissing the complaint. Petition for rehearing en banc was denied on May 3, 2010. This court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES

The text of the following federal statutes are in Appendix F: 28 U.S.C. §§ 1446, 1447; 42 U.S.C. § 1983, App. 42-48.

STATEMENT OF THE CASE

(i) Proceedings in the Courts below

Petitioner Harold Stanley filed a 42 U.S.C. § 1983 complaint against state court judge the Honorable Jack Grate, Marcia Stanley, and her attorney Les Wight, Esq. on September 6, 2006. The

complaint alleges and proves the Respondents held a state court proceeding and issued a civil contempt arrest warrant that is still alive with full knowledge the state court action had been properly removed to federal court and that the federal court had not issued a remand order.[1]

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. In a memorandum opinion and orders dated January 9, 2007, November 9, 2007 and November 13, 2007 Judgment the district court dismissed all defendants holding that The Honorable Jack Grate had immunity from suit as a judge, i.e. he had jurisdiction, Les Wight III, Esq. had immunity from suit as an attorney as well as he was not a state actor, and Marcia Stanley was not a state actor.

On March 24, 2010 the court of appeals affirmed the district court order without a written opinion. On May 3, 2010 the court of appeals denied without a written opinion a petition for rehearing *en banc*.

The removed action that led to this 42 U.S.C. § 1983 action has controversial procedural issues that confound the current case.[2,3] Procedural details of

---

[1] The district court entered a dismissal Judgment in the removed action. Also at issue here, though not a question presented, is whether the order "dismissing" was, as the district court judge later claims, an order of "remand." This point is discussed in the Statement of the Facts. See Dismissal Judgment App. p 34, Also please note footnote 1 App. p.. 5.

[2] The removed action was Harold Stanley v Marcia Stanley, In the United States District Court for the Western District of Missouri, Western District Case No. 05-0281-CV-W-GAF. Orders at App. D and E.

the removed action are discussed in the Statement of the Facts.

(ii) Statement of Facts

No facts have ever been in dispute. All facts center around judicial proceedings and court orders.

Petitioner filed a detailed 42 U.S.C. § 1983 complaint in federal district court alleging the Respondents, in a prior removed action, violated his liberty interest and Fourteenth Amendment civil rights by holding a state court proceeding and ordering a civil contempt arrest warrant. They knew, and were twice advised, prior to the proceeding that the action had been properly removed to federal district court on March 24, 2005.[4]

On October 25, 2005, in the removed action district court judge, the Honorable Gary A. Fenner granted defendant Marcia Stanley's Motion for Dismissal and entered a Dismissal Judgment of the removed claims holding the court lacked subject matter jurisdiction. (Appendix D: District Court Dismissal Order, App. 34-40)

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[3] The nature of the state court proceeding was a hearing for contempt against Harold Stanley for alleged alimony arrearages. Mr. Stanley alleged the enforcement of the Missouri alimony statute violated his Fourteenth Amendment right of privacy in the constitutionally protected fundamental right of "personal decisions relating to marriage."

[4] Harold Stanley's Writs of Mandamus to the Missouri Court of Appeals and to the Supreme Court of Missouri to order the Honorable Jack Grate to comply with federal statute 28 U.S.C. § 1446 and its case law were each denied without written opinion.

On December 9, 2005, after the above dismissal Judgment but before remand, the Respondents held a state court hearing and ordered the arrest warrant.

In the instant action, all Respondents' motions for dismissal were granted on grounds noted above in Proceedings of the Court below.

The Honorable Gary A. Fenner presided in this action as well as the prior removed action.

Concomitant with dismissing this action the Honorable Gary A. Fenner, sua sponte 15 months after issuing his dismissal order in the removed action entered another Judgment, i.e. of remand, on January 16, 2007. This second Judgment, i.e. of remand, is confounding because it seems to imply the Honorable Gary A. Fenner believes he did not remand the removed action with his Dismissal Judgment on October 25, 2005. This is despite in his dismissal of this 42 U.S.C. § 1983 action he states his dismissal order/Judgment in the removed action was in fact a remand. (Appendix B: District Court Dismissal Orders in the instant civil rights action, App. 3-19. Appendix E: District Court Order of Remand in the removed action, App. 41.)

ARGUMENT

THIS WRIT SHOULD BE GRANTED TO CORRECT THE RULINGS THAT ARE CONTRARY TO ALL CASELAW ON PRIVATE PARTY, ATTORNEY AND JUDGE'S LIABILITY TO SUIT UNDER 42 U.S.C. § 1983; TO DETERMINE IF 28 U.S.C. § 1446(d) CREATES A

"CLEAR ABSENCE OF ALL JURISDICTION" IN A STATE COURT AFTER PROPER REMOVAL; AS WELL AS TO PRESERVE JUDICIAL INTEGRITY THAT IS THREATENED IF THE LOWER COURTS' RULINGS ARE PERMITTED TO STAND.

(i) Policy

Judicial accountability. Judges and attorneys are granted enormous discretion and freedom for themselves from the ravages of litigation. Because of this granted broad scope of protection when a court steps across the line and exercises power without jurisdiction, and when that power results in the deprivation of a citizen's liberty interest and freedom, Congress has created a remedy. The Civil Rights Act of 1871 affords citizens the opportunity to address the transgression. Here this opportunity has erroneously been denied.

Though this case does not present intellectually complex nuances, nor a major societal issue, the failure of the lower courts to permit the light of justice to shine on flawed proceedings should not be a reason to further deny a single citizen his liberty interest and freedom.

When all the law of 42 U.S.C. § 1983 is contrary to the lower courts' view of judicial immunity and state actors the lower courts' errors should not be etched in perpetuity but instead merit attention and correction.

This court is rarely provided the opportunity to address the conduct of brethren with binding

words in an opinion forum. It is equally rarely afforded the chance to discuss the importance of judicial accountability. In today's era when the courts are under ever increasing hostile public scrutiny from all quarters, the opportunity to imbue a bipartisan accountability is ever more important. The judicial conduct, knowingly exercising power denying liberty without jurisdiction deserves the opportunity of an open judicial proceeding. These are all policy reasons this court should grant this writ.

(ii) Contrary law

The lower court decided an important question of federal and civil rights law. It did so in a way that is contrary to all of this court's rulings on judicial immunity and defining state actors for 42 U.S.C. § 1983 actions.

(iii) Jurisdictional Limitation of 28 U.S.C. § 1446(d)

This court has not ruled on whether a state court proceeding contrary to 28 U.S.C. § 1446(d) is a proceeding "in clear absence of all jurisdiction" or is a "proceeding in excess of jurisdiction" – the former creating a loss of immunity from suit for a state court judge.

(iv) Judicial Immunity

This court has affirmed broad judicial immunity to judges. This court has left unfettered

the immunity of a judge except "he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Stump v. Sparkman*, 435 U.S. 349, 357 (1978).

This court has not ruled on whether a state court proceeding contrary to 28 U.S.C. 1446(d) is a proceeding "in clear absence of all jurisdiction" or is a "proceeding in excess of jurisdiction" – the former creating a risk of liability for the state court judge.

The lower courts in this case never addressed whether 28 U.S.C. § 1446(d) "...and the State court shall proceed no further unless and until the case is remanded" unambiguously creates a "clear absence of jurisdiction." The Petitioner argued this point strongly but the district court never addressed the argument.

The district court instead crafted its immunity holding around the concept the state court judge had jurisdiction to hear divorce and alimony cases. The district court overlooked 28 U.S.C. § 1446 (d) and all the case law presented to it that lucidly holds that the statute deprived the state court of all jurisdiction until the removed action is remanded.

1. A proper filing of a notice of removal immediately strips the state court of its jurisdiction. 28 U.S.C. § 1446(d), *State of South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971); *Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1254 (11th Cir. 1988); *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir. 1962); "Any subsequent proceedings in state court on the case are void ab initio." *Maseda*, 861 F.2d at 1254-55 (citing *Steamship Co. v. Tugman*, 106 U.S.

118, 122 (1882)); accord *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971).

Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882),

> "...the suit being removable under the statute, the jurisdiction of the state court absolutely ceased and that of the circuit court of the United States immediately attached. The duty of the state court was to proceed no further in the cause. Every order thereafter made in that court was *coram non judice* unless its jurisdiction was actually restored."

2. A Judgment of remand was not issued in the removed action until the same presiding judge in this action and the removed action sua sponte, 15 months after entering an order of dismissal, entered a Judgment of remand on January 16, 2007. (App: E)

The district court's order and Judgment of dismissal was contrary to *Int'l Primate Prot. League v. Admin. of Tulane Ed. Fund*, 500 U.S. 72, 89 (1991) (noting that "the literal words of § 1447(c) . . . give . . . no discretion to dismiss rather than remand an action."

3. This sua sponte second Judgment, i.e. of remand is further evidence that remand did not take place until January 16, 2007—if then. The entry of a Judgment of remand fifteen months after a

Judgment of dismissal is contrary to this court's ruling that a Judgment of dismissal has finality. See *C.I.R. v. Sunnen*, 333 U.S. 591, 597 (1948),

> "The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See von Moschzisker, 'Res Judicata,' 38 Yale L.J. 299; Restatement of the Law of Judgments, 47, 48."

(v) Attorney is a State Actor

1. The circuit court's affirmation, that Respondent Les Wight, III, Esq. as an attorney had privilege from suit in a 42 U.S.C. § 1983 action is contrary to *Wyatt v. Cole*, 504 US 158 (1992) where an attorney and his client were proper defendants in a 42 U.S.C. § 1983 action where privilege was never an issue.

This court has not addressed whether attorney privilege applies to attorney conduct in an ultra vires proceeding.

2. The lower courts' ruling is also contrary to *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982),

> "`Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under

> color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,'" quoting *United States v. Price*, 383 U.S., at 794 . [457 U.S. 922, 942]"

(vi) Layperson is a Proper Defendant

The lower courts' ruling that Marcia Stanley is not a state actor and therefore dismissed is contrary to this court's ruling. *Dennis v Sparks*, 449 U.S. 24, 27-28 (1980),

> "...to act 'under color of state law for 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966)"

CONCLUSION

This court should grant this petition for a writ of certiorari.

Respectfully submitted,

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Counsel of Record

July 30, 2010

No. _____

In The

Supreme Court Of The United States

HAROLD R. STANLEY,
Petitioner

v.

THE HONORABLE JACK GRATE, ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
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FOR THE EIGHTH CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 09-2198

Harold R. Stanley

Appellant

v. Honorable Jack Grate, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City (4:06-cv-00752-GAF)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 03, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-2198

Harold R. Stanley, Plaintiff - Appellant

v. Honorable Jack Grate; Lester Wight; Marcia E. Stanley,

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City (4:06-cv-00752-GAF)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

March 24, 2010

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

HAROLD STANLEY, Plaintiff
v. HON. JACK GRATE, et al., Defendants
Case No. 06-752-CV-W-GAF

ORDER

Pending before the Court are two Motions to Dismiss, filed pursuant to Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") by Defendants Les G. Wight II ("Wight") and Hon. Jack Grate ("Judge Grate") (collectively "Defendants"). (Doc. #13, #17). Judge Grate is a judge for the Circuit Court of Jackson County, Missouri and Wight is counsel for Plaintiff Harold Stanley's ("Plaintiff") ex-wife, Marcia E. Stanley ("Ms. Stanley"). Plaintiff, who is proceeding *pro se*, asserts that Defendants intentionally inflicted emotional distress and deprived him of his rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution by pursuing litigation against Plaintiff in Missouri state court to enforce a state court judgment requiring Plaintiff to pay alimony to Ms. Stanley. (Doc. #1). Plaintiff claims that Defendants' pursuit of such litigation violates his rights because the Missouri state court lacks jurisdiction over matters related to Plaintiff's divorce. Id.

Because Judge Grate is entitled to judicial immunity from suit, his Motion to Dismiss all counts against him is GRANTED. Further, Plaintiff fails to state a claim for declaratory judgment against Wight

in Count I because Plaintiff does not indicate what relief he seeks by way of declaratory judgment. Plaintiff also fails to state a claim against Wight in Count IV for intentional infliction of emotional distress ("IIED") because Plaintiff sets forth no facts to support a finding that Wight engaged in extreme and outrageous conduct or that Wight's actions were intended only to cause Plaintiff emotional harm. Finally, Plaintiff fails to state claims against Wight in Counts II and III under the First, Fifth, or Fourteenth Amendments because Wight, as a private attorney, is not subject to liability for alleged violations of individual constitutional rights. Accordingly, Wight's Motion to Dismiss all counts against him is GRANTED.

DISCUSSION

I. Facts

Plaintiff was divorced from Ms. Stanley in December 2000 in the Circuit Court of Jackson County, Missouri. (Doc. #1). Plaintiff filed a "removal complaint" with this Court on March 24, 2005, purporting to remove civil contempt proceedings filed against him by Ms. Stanley for Plaintiff's alleged failure to pay court-ordered alimony in accordance with the parties' divorce decree. (Case No. 05-cv-00281-GAF). Plaintiff's "removal complaint" claimed that the Missouri Dissolution of Marriage Maintenance Provisions violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution because they infringed upon his "personal decisions relating to

marriage" and his "fundamental right to privacy to dissolve his marriage." Id. At Doc. #1. Plaintiff further alleged that the Missouri alimony statute violated the Thirteenth Amendment of the U.S. Constitution by "den[ying] him his property rights and permanently enslav[ing] him to labor for the benefit of his former spouse." Id.

On October 25, 2005, the Court dismissed Plaintiff's "removal complaint," finding that removal of Plaintiff's counterclaims was improper because this Court did not have original subject matter jurisdiction over Ms. Stanley's actions for civil contempt. Id. at Doc. #12. The Court further found that it lacked jurisdiction pursuant to the domestic relations exception to federal jurisdiction because Plaintiff's claims closely related to his marriage dissolution and, therefore, jurisdiction was proper only in Missouri state court. Id. This Court dismissed Plaintiff's "removal complaint" for lack of subject matter jurisdiction.

On November 15, 2005, following this Court's dismissal of Plaintiff's "removal complaint," Judge Grate issued a Notice of Hearing for December 9, 2005. (Doc. #1). Plaintiff informed the state court that is [sic] was without jurisdiction to proceed in the case. Id. Plaintiff claims that the Missouri state court lacked jurisdiction to pursue litigation against him to enforce its judgment because this Court dismissed Plaintiff's claims but did not explicitly state in its Order that the case was therefore remanded to the Missouri state court.[1] (Doc. #15-1,

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1 This Court clearly divested itself of jurisdiction in its October 25, 2005 Order and made abundantly clear to Plaintiff that

#21). Following this Court's October 25, 2005 Order, the Missouri state court has pursued litigation against Plaintiff relating to his alleged failure to pay court-ordered alimony, which Plaintiff contends constitutes intentional infliction of emotional distress and violates his rights under the First, Fifth, and Fourteenth Amendments.

Judge Grate argues that Plaintiff's claims against him should be dismissed because he is entitled to judicial immunity. (Doc. #13). Wight argues that Plaintiff's claim in Count I, entitled "Declaratory Relief," should be dismissed because Count I does not actually seek declaratory relief, or any relief at all. (Doc. #18). Wight further argues that Plaintiff's Complaint fails to allege facts under Count IV which support his claim for IIED. Id. Lastly, Wight argues that he is not subject to liability under Counts II and III for alleged violations of Plaintiff's constitutional rights because he is a private attorney, not a state actor. Id.

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jurisdiction was proper in Missouri state court. Plaintiff did not appeal the Order. However, due to an inadvertent error, the Order neglected to explicitly state that the case was thereby remanded and to instruct the clerk's office to mail a certified copy of the order of remand to the clerk of the state court. This Court does not believe that such an order is necessary, given the record herein. However, to avoid any potential for dispute on this question from this point forward, the clerk's office is hereby instructed to mail a certified copy of Doc. #12 in Case No. 05-cv-00281-GAF to the clerk of the state court together with the explicit order of remand which has been entered in said case.

II. Standard

A motion to dismiss is the proper method to test the legal sufficiency of the complaint. Schuer v. Rhodes, 416 U.S. 232, 236 (1974). Rule12(b)(6) provides that a cause of action may be dismissed for the failure to state a claim upon which relief may be granted. When considering a motion to dismiss, the court treats all well pled facts as true and grants all reasonable inferences therefrom in favor of the non-moving party. Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990). However, the court is not required to accept the pleader's own legal conclusions. Id. A motion to dismiss should only be granted if it appears from the face of the complaint that the plaintiff cannot prove any set of facts to support his claims for relief. Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986).

III. Analysis

A. Judicial Immunity

Judge Grate contends that judicial immunity bars Plaintiff's claims against him. (Doc. #13). Plaintiff argues that Judge Grate is not immune from suit because Judge Grate lacked jurisdiction to enforce the state court judgment requiring Plaintiff to pay alimony. (Doc. #15-1). It is essential to the administration of justice that a state court judge exercising his authority "shall be free to act upon his own convictions, without apprehension of personal consequences to himself." Mireless v. Waco, 502 U.S. 9, 10 (1991). Accordingly, a judge may be subject to suit only for non-judicial acts or for actions taken in

the complete absence of all jurisdiction. Duty v. City of Springdale, Arkansas, 42 F.3d 460, 462 (8th Cir. 1994). The scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge, because some of the most difficult questions a judge determines are those related to his jurisdiction. Id. *quoting* Stump v. Sparkman, 435 U.S. 349, 356 (1978). An act in excess of jurisdiction will not deprive the judge of immunity. Id. Acts done in excess of jurisdiction are far different from acts done in the complete absence of jurisdiction. Id. A "judge acts in excess of jurisdiction if the act complained of is within his general power of jurisdiction but is not authorized because of certain circumstances." Id. *quoting* Billingsley v. Kyser, 691 F.2d 388, 389 (8thCir.1982) (*per curiam*). In contrast, "there is a clear absence of jurisdiction when a court of limited jurisdiction attempts to adjudicate a case outside of its jurisdiction, such as when a probate court conducts a criminal trial." Id. *citing* Mann v. Conlin, 22 F.3d 100, 104 (6th Cir. 1994), cert. denied, 513 U.S. 870 (1994).

In this case, Plaintiff argues that Judge Grate lacked jurisdiction to enforce his own judgment requiring Plaintiff to pay alimony because this Court did not explicitly remand the case to state court in its October 25, 2005 Order. However, as discussed at length in this Court's October 25, 2005 Order, domestic relations proceedings are subject to the exclusive jurisdiction of the state court. The Order made clear that jurisdiction was proper in Missouri state court, and that no basis whatsoever existed for federal court jurisdiction. Plaintiff's filing of frivolous

counterclaims in federal court clearly cannot be said to deprive Judge Grate "of all jurisdiction" to enforce his own judgment. Further, an inadvertent clerical error made by this Court does not divest Judge Grate of judicial immunity and subject him to suit for alleged violations of Plaintiff's civil rights, particularly in light of this Court's clear finding in its October 25, 2005 Order that jurisdiction was proper in state court. Accordingly, judicial immunity protects Judge Grate from suit and his Motion to Dismiss all counts against him is GRANTED.

B. Declaratory Judgment

Count I of Plaintiff's Complaint is entitled "Declaratory Relief." (Doc. #1). Wight argues that this Count should be dismissed because it consists entirely of abstract invocations of the First, Fifth, and Fourteenth Amendments but does not indicate what relief Plaintiff seeks by way of a declaratory judgment. (Doc.#18). "The same pleading standards that apply in other civil actions govern proceedings under the [Declaratory Judgment Act]." Miller v. Pacific Shore Funding, 224 F.Supp.2d 977, 993 (D. Md. 2002) *citing* Marchese v. Shearson Hayden Stone, Inc., 644 F.Supp. 433, 439 (D.Md. 1992); 5 Wright & Miller, Federal Practice and Procedure: Civil 3d § 1238 (3d ed. 2004). Thus, in seeking a declaratory judgment, a plaintiff must state a claim for which relief may be granted. Marchese, 644 F.Supp. at 993 *citing* Fed. R. Civ. P. 8(a). The failure to indicate what the plaintiff seeks by way of declaratory judgment is itself a failure to state a claim. Conkey v. Reno, 885 F.Supp. 1389, 1392 (D.

Nev. 1995) (citations omitted).

In this case, Count I simply incorporates previously pleaded allegations and adds: "The Plaintiff is entitled to the protections of the First, Fifth, and Fourteenth Amendments to the United States Constitution liberty interests, particularly the right of association, right to travel, right to due process and equal protection." Count I does not pray for declaratory judgment and does not make factual allegations sufficient to support a claim for declaratory judgment. Instead, Count I consists only of abstract invocations of the First, Fifth, and Fourteenth Amendments. Because Plaintiff fails [sic] set forth factual allegations in support of his claim for declaratory judgment and fails to indicate what he seeks by way of a declaratory judgment, Wight's Motion to Dismiss Count I is GRANTED.

C. IIED

Wight argues that Plaintiff's claim against him for IIED fails to set forth facts which would support a finding that Wight engaged in extreme and outrageous conduct or that the sole purpose of Wight's conduct was to cause Plaintiff emotional distress. To state a claim for IIED under Missouri law, "a plaintiff must plead extreme and outrageous conduct by a defendant who recklessly or intentionally causes severe emotional distress that results in bodily harm." Sansonetti v. City of St. Joseph, 976 S.W.2d 572, 579 (Mo. App. W.D. 1998) *citing* Gibson v. Brewer, 952 S.W.2d 239, 249 (Mo. banc 1997). Extreme and outrageous conduct is difficult to define; however, "it is clear that the

defendant's conduct must be more than simply malicious and intentional." Viehweg v. Vic Tanny Int'l of Mo., Inc., 732 S.W.2d 212, 213 (Mo. Ct. App. 1987). "Mere insults, indignities, inconsiderations or petty oppressions do not rise to the level of outrageous conduct." Wooten v. Pleasant Hope R-VI School Dist., 139 F.Supp.2d 835, 843 (W.D. Mo. 2000) *quoting* Evans v. Six Flags, 613 F.Supp. 219, 220 (E.D. Mo. 1985). Indeed, Missouri courts have recognized that, to meet the definition of extreme and outrageous conduct, the defendant's conduct must "go beyond all possible bounds of decency, [so as to] be regarded as atrocious and utterly intolerable in a civilized community." Viehweg, 732 S.W.2d at 213. Under Missouri law, it is for the Court to determine whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Wilt v. Kansas City Area Transp. Authority, 629 S.W.2d 669, 671 (Mo. App. W.D. 1982). The Court should grant a motion to dismiss if it is not reasonably debatable that the conduct described in the complaint is not shocking or atrocious. *See* Wooten, 139 F.Supp.2d at 843.

Here, Plaintiff claims that "[t]he conduct of all Defendants was odious, perverse, and outrageous, to relish in the delight of repeated ex parte ultra vires conduct to deprive the Plaintiff of his freedom and to utterly disregard and flaunt voluminous federal law denying them the authority to which they exercised self aggrandizement of jurisdiction." (Doc. #1). Though Plaintiff's allegations consist of many colorful adjectives and phrases, nowhere does

Plaintiff allege any actual facts which support a finding that Wight's conduct was extreme and outrageous. When translated into plain English, Plaintiff's Complaint appears to allege only that, in the course of representing Ms. Stanley, Wight appeared and/or filed motions before Judge Grate, and that Judge Grate made rulings favorable to Wight's client and adverse to Plaintiff, allegedly without jurisdiction to do so. These allegations and any inferences that may be drawn from them do not support the conclusion that Wight's alleged conduct may reasonably be regarded as extreme and outrageous.

Further, an essential element of the tort of intentional infliction of emotional distress is that "the conduct must be intended **only** to cause extreme emotional distress to the victim." Thomas v. Special Olympics Missouri, Inc., 31 S.W.3d 442, 446 (Mo. App. W.D. 2000) *quoting* K.G. v. R.T.R., 918 S.W.2d 795, 799 (Mo. banc 1996) (emphasis in original). Accordingly, "one must allege not just that the actor knew that emotional distress would result from his or her acts, but that [inflicting emotional distress] was the **sole** motivation for the actor's conduct." Id. at 448 (emphasis in original). Plaintiff's Complaint contains no such allegations or inferences. Because Plaintiff fails to set forth facts which would support a finding that Wight engaged in extreme and outrageous conduct or that Wight's actions were intended solely to cause emotional harm, Wight's Motion to Dismiss Plaintiff's IIED claim against him is GRANTED.

D. First, Fifth, and Fourteenth Amendments

Count II is entitled "Deprivation of Constitutional Rights and Privileges," and Count III is entitled "Conspiracy to Deprive Persons of Equal Protection of the Laws." (Doc. #1). Both Counts appear to allege violations of the First, Fifth, and Fourteenth Amendments. Wight argues that lawyers acting in the representation of their clients cannot be held liable for alleged constitutional violations because they do not act under color of state law. Indeed, it is well settled that the conduct of legal counsel generally does not constitute action under color of law.[2] DuBose v. Kelly, 187 F.3d 999, 1003 (8th Cir. 1999); *see also* Polk County v. Dodson, 454 U.S. 312, 325 (1981) (public defender appointed by state court to represent an indigent defendant does not act under color of state law when performing lawyer's traditional functions); Chambers v. Kaplan, 648 F.2d 1193, 1194 (8th Cir. 1981) (private attorney representing inmate in a lawsuit against the state department of corrections did not act under color of state law).

Only in extraordinary circumstances where a private attorney acts as a "willful participant in joint action with the State or its agents" can § 1983 liability be imposed on a private attorney. DuBose, 187 F.3d at 1003. "The key inquiry is whether the private party was a willful participant in [a] corrupt conspiracy." Id. To withstand a motion to dismiss,

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2 Though Plaintiff does not explicitly state in his Complaint, the Court treats Counts II and III as being brought pursuant to 42 U.S.C. § 1983 ("§ 1983").

allegations of conspiracy "must be pled with sufficient specificity and factual support to suggest a 'meeting of the minds.'" Manis v. Sterling, 862 F.2d 679, 681 (8th Cir. 1988) *quoting* Smith v. Bacon, 699 F.2d 434, 436 (8th Cir. 1983). To state a claim for a § 1983 conspiracy, "a plaintiff must plead in detail, through reference to material facts, the relationship or nature of the conspiracy between the state actor(s) and the private persons." Harvey v. Harvey, 949 F.2d 1127, 1133 (11th Cir. 1992) *citing* Fullman v. Graddick, 739 F.2d 553, 556-57 (11th Cir. 1984). Conclusory, vague and general allegations of conspiracy are not sufficient to state a claim upon which relief may be granted. Fullman, 739 F.2d at 557.

The DuBose case presents a rare example of the circumstances under which a private attorney may be considered to have acted under color of law by acting as a willful participant in a conspiracy with state actors. In DuBose, a plaintiff had prosecuted a malpractice case against his attorney in an earlier matter. Id. at 1000. After the plaintiff lost the suit against his attorney, the plaintiff filed an action under § 1983, alleging that his attorney, his attorney's attorneys, and the state trial judge who heard the suit had conspired to deprive him of his right to due process. Id. The plaintiff alleged that he had overheard his attorney and his attorney's attorneys, through court chamber doors, conspiring with the judge to prevent the plaintiff's attorney from being held liable in the malpractice suit the plaintiff had filed. Id. at 1001. The plaintiff alleged that, after the parties went over the pros and cons

involved, the judge stated to the attorneys that the plaintiff's attorney could "enjoy his retirement." Id.

In the instant case, Plaintiff's factual allegations imply, at most, that Wight appeared before Judge Grate in the course of Wight's representation of Ms. Stanley, and that Judge Grate made rulings adverse to Plaintiff. The fact that a court makes a ruling favorable to one side and adverse to the other in a contested proceeding does not imply a "corrupt conspiracy" which transforms a private attorney into a state actor under § 1983. Though Plaintiff concludes in his Complaint that Judge Grate, Wight, and Ms. Stanley conspired to deprive him of his civil rights, Plaintiff fails to put forth any material facts which would suggest that there was a "meeting of the minds" between Wight and either Judge Grate or Ms. Stanley. Because conduct of private legal counsel generally does not constitute action under color of law and because Plaintiff sets forth no facts which would support an inference that Wight engaged in a conspiracy with state actors, Wight's Motion to Dismiss Counts II and III is GRANTED.

CONCLUSION

Because Judge Grate did not act in the absence of jurisdiction in pursuing litigation to enforce the Missouri state court's judgment against Plaintiff, Judge Grate is entitled to judicial immunity from suit. Accordingly, Judge Grate's Motion to Dismiss all counts against him is GRANTED. Plaintiff fails to state a claim for declaratory judgment against Wight in Count I because Plaintiff does not indicate what

relief he seeks by way of declaratory judgment. Plaintiff also fails to state a claim against Wight for IIED in Count IV because Plaintiff sets forth no facts to support a finding that Wight engaged in extreme and outrageous conduct or that Wight's actions were intended only to cause Plaintiff emotional harm. Finally, Plaintiff fails to state claims against Wight in Counts II and III under the First, Fifth, or Fourteenth Amendments because Wight did not act under color or law and is therefore not subject to liability for alleged violations of Plaintiff's constitutional rights. Accordingly, Wight's Motion to Dismiss all counts against him is GRANTED.

IT IS SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: January 9, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

HAROLD STANLEY, Plaintiff,
vs. HON. JACK GRATE, et al., Defendants.
Case No. 06-0752-CV-W-GAF

ORDER

Pending before the Court is Plaintiff Harold Stanley's ("Plaintiff") Motion for Partial Summary Judgment against Defendant Marcia Stanley ("Defendant") filed pursuant to Fed. R. Civ. P. 56. (Doc. #39).

A federal court can dismiss a suit for lack of subject matter jurisdiction where a plaintiff's claim his constitutional rights were violated does not contain sufficient allegations of state action.[1] *See* Lubin v. Crittenden Hosp. Ass'n, 713 F.2d 414, 415-16 (8th Cir. 1983); Briscoe v. Bock, 540 F.2d 392, 394, 396 (8th Cir. 1976); *and* Nowlin v. Prof'l Auto Sales, Inc., 496 F.2d 16, 17 (8th Cir. 1974) (affirming dismissal for lack of subject matter jurisdiction where plaintiff's claims did not sufficiently allege state action).

In this Court's January 9, 2007 Order, the Court held Plaintiff's constitutional claims against Defendant's Co-defendant Les G. Wight II ("Wight") could not proceed because Wight was a private actor

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1 Fed. R. Civ. P. 12(h)(3) requires a court to dismiss an action, whether or not the parties raise the issue, if the court determines it lacks subject matter jurisdiction over the action.

under the circumstances. (Doc. #32 pp. 8-11). Plaintiff's present claims against Defendant are identical to those he made against Wight. (Doc. #1). The same analysis the Court applied in dismissing Plaintiff's claims against Wight applies here. Plaintiff's claim for Intentional Infliction of Emotional Distress also fails because it is based on state law and the Court has no original jurisdiction in this case. Accordingly, all Plaintiff's claims against Defendant are DISMISSED.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: **November 9, 2007**

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

HAROLD STANLEY, Plaintiff,
vs. HON. JACK GRATE, et al., Defendants.
Case No. 06-0752-CV-W-GAF

____**Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that all Plaintiff's claims against Defendant are DISMISSED.

IT IS FURTHER ORDERED AND ADJUDGED pursuant to this Court's order of January 9, 2007 that Judge Grate's Motion to Dismiss all counts against him is GRANTED and Wight's Motion to Dismiss all counts against him is GRANTED.

Patricia L. Brune
Clerk
/s/ Tracy L. Diefenbach
(by) Deputy Clerk

November 13, 2007

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION
CIVIL COMPLAINT

Harold-Ray: Stanley, Plaintiff vs.
The Honorable Jack Grate In his official capacity and in his personal capacity, Lester D. Wight, Esq., Marcia E. Stanley, Defendants
Case No.: 06-0752-CV-W-GAF
VERIFIED COMPLAINT and JURY DEMAND

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; DAMAGES FOR CIVIL RIGHTS VIOLATIONS AND; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND WRIT OF MANDAMUS

I. Parties to this Civil Action

A. Name of Plaintiff Harold-Ray: Stanley

B. Defendant, Jack Grate, is a judge in the Sixteenth Judicial Circuit of Jackson County Missouri at Independence Missouri.

C. Additional Defendants:
Lester Wight, Esq., is an attorney in the State of Missouri, with office in Independence Missouri, representing Plaintiff's ex-wife Marcia E. Stanley.
Marcia E. Stanley, to the best of Plaintiff's knowledge, is employed as a cafeteria manager for the Lee's Summit Missouri school district.

II. Statement of Claim

Plaintiff, Harold-Ray: Stanley, *pro se* with assistance of counsel, brings this action to obtain redress for the deprivation and conspiracy to deprive Plaintiff of his federally protected rights as hereafter alleged, for intentional infliction of emotional distress, as well as for declaratory, injunctive, compensatory damages, and punitive damages relief. The claims are based on conspiracy of the defendants through a series of ultra vires judicial proceedings culminating in ex parte ultra vires conduct exercising a flagrant abuse of judicial arrest power designed to improperly deny the Plaintiff his First, Fifth and Fourteenth Amendment United States Constitution civil rights.

STATEMENT OF THE FACTS

1. Harold-Ray: Stanley permanently separated from Marcia E. Stanley in September 1994.
2. Harold Ray: Stanley was granted his petition for dissolution of his marriage to Marcia E. Stanley in December 2000 by the Sixteenth Circuit Court of Missouri, Jackson County Missouri. (Sixteenth Judicial Circuit Court Case Number DR96-08993)
3. Marcia E. Stanley was awarded substantially all of the marital property, both real property and household property.
4. Harold Ray: Stanley was awarded his personal belongings, and most of the marital debt.
5. The court awarded substantial alimony against the former husband to the former wife which he paid for nearly 4 years after the dissolution.

6. Harold-Ray: Stanley's wage earning capacity as an electrical engineer serving the electric utility industry, was severely reduced in the electric utility industry collapse following the Enron scandal in late 2001. As it became clear in 2002 and 2003 that this circumstance was substantial and continuing, Harold Ray: Stanley, through counsel, filed a Motion to Modify Maintenance on April 7, 2004.
7. Defendant Jack Grate entered an Order of Contempt against Harold Ray: Stanley on July 1, 2004, following a May 14, 2004 hearing on the issue of alimony payment arrearages. An incomplete Order of Contempt was first entered on May 26, 2004, over 5 months prior to Harold-Ray: Stanley's presentation of evidence concerning his inability to pay. Harold-Ray: Stanley's evidence concerning inability to pay was first entered on November 5, 2004, some 7 months after his Motion to Modify Maintenance was filed on April 7, 2004.
8. Defendant Jack Grate, on November 8, 2004, reduced Harold Ray: Stanley's alimony obligation by 17%, in the face of evidence that Harold-Ray: Stanley's earning capacity had reduced over 30%, and Harold Ray: Stanley had fully depleted all retirement savings in 2003 and 2004 to pay virtually all alimony demands through September 2004.
9. Defendant Jack Grate, on February 24, 2005, added the threat of incarceration for failure to pay the full alimony demanded by the Court orders.

10. On March 24, 2005 the Plaintiff, *pro se*, removed his state action to this Federal District Court pleading newly created 42 U.S.C. § 1983 violations by Defendants Marcia E. Stanley and The Honorable Jack Grate. (United States District Court, Western Missouri District Case Number 05-0281-CV-W-GAF). (Appendix A: Notice of Filing of Notice of Removal filed in Sixteenth Judicial Circuit Court of Missouri)
11. On March 25, 2005 counsel for the Plaintiff telephoned Defendant Lester Wight, Esq. Plaintiff's counsel told Lester Wight removal of the state action had been effected to the Western District of Missouri Federal District Court with proper notice to the Clerk of the Sixteenth Judicial Circuit Court of Missouri. Counsel also faxed Defendant Lester Wight, Esq. the date stamped Notice of Removal. Plaintiff also mailed the removal documents to all defendants in the U.S. mail.
12. On March 25, 2005 counsel for the Plaintiff made special appearance before Defendant The Honorable Jack Grate, providing a copy of the Clerk's stamped notice of removal, and informing Defendants that removal to the Western District of Missouri Federal District Court had been effected on March 24, 2005, and that Sixteenth Judicial Circuit Court of Missouri no longer had jurisdiction, there was no jurisdiction for the contempt hearing as scheduled for March 25, 2005, and that Harold-Ray: Stanley was not going to appear.

13. On September 9, 2005, this Federal District Court issued a Scheduling and Trial order for the removed case.
14. On October 25, 2005, this Federal District Court dismissed the case as requested by Marcia E. Stanley through counsel. The case was not remanded back to State court.
15. On November 15, 2005, Defendant The Honorable Jack Grate acting in concert together with Les Wight, Esq., issued a Notice of Hearing for December 9, 2005.
16. On November 28, 2005, Harold Ray: Stanley informed the State Court that it was without jurisdiction to proceed on this case, citing 28 U.S.C 1446 (d).
17. Lacking all jurisdiction, on December 9, 2005 the Defendant The Honorable Jack Grate, acting in a ministerial, not neutral adjudicator capacity, in concert with the other defendants did knowingly, willfully, wantonly, and with malice enter a contempt order and bodily commitment order and issue an arrest warrant ex parte, ultra vires, that is still in effect today against the Plaintiff. (Appendix C: Judgment Entry, Review of Contempt)
18. Lacking any jurisdiction because the federal court had dismissed the case, on January 5, 2006, Defendant The Honorable Jack Grate issued an Order to Show Cause. Order was received by Harold-Ray: Stanley on January 12, 2006, and refused on January 13, 2006 for lack of jurisdiction. (Appendix D: Refusal of Order to Show Cause)

19. All Defendants together conspired to deny the Plaintiff his federal constitutional rights by persistent litigation in state court absent any jurisdiction in that forum and after they voluntarily sought dismissal of the action when it was in federal court.
20. The conspiratorial conduct of the Defendants has deprived the Plaintiff the exercise of his civil rights, i.e. First Amendment right of association with family, friends, and professional colleagues in Missouri, Fifth Amendment, inter alia, right to travel in, around and out of Missouri, and Fourteenth Amendment due process and equal protection rights.

COUNT I
DECLARATORY RELIEF

21. Plaintiff alleges and incorporates 1-20 above.
22. The Plaintiff is entitled to the protections of the First, Fifth, and Fourteenth Amendments of the United States Constitution liberty interests, particularly the right of association, right to travel, right to due process and equal protection.

COUNT II
DEPRIVATION OF CONSTITUTIONAL RIGHTS AND PRIVILEGES

23. Plaintiff alleges and incorporates 1-20 above.
24. Plaintiff is entitled to the due process of law under the First, Fifth and Fourteenth Amendments of the United States Constitution.
25. Defendant The Honorable Jack Grate, acting under color of state law in his ministerial

capacity, officially and personally, contrary to then well known law knowingly and willfully entered impermissible extrajurisdictional ultra vires orders depriving the plaintiff of his Fourteenth amendment due process rights.

26. The Defendants were informed of the law, by Plaintiff's and Plaintiff's counsel's repeated notices. The law was well settled and known to a reasonable person, to the Missouri Bar, and to the Missouri Judiciary at the times of the ex parte ultra vires orders.

27. To this date, Plaintiff has not received any notice, or been provided with any memorandum of law, that might lawfully revive the case reposed by this Federal District Court on October 25, 2005. Over 8 months have expired since Plaintiff's November 28, 2005 notice to the court of lack of jurisdiction; the notice of lack of jurisdiction stands as a no-answer default judgment in favor of the Plaintiff.

28. All Defendants, acting under color of state law, acted to deprive the Plaintiff of his First Amendment right of association, Fifth Amendment right to travel and Fourteenth Amendment due process right by participating in an ex parte ultra vires hearing on December 9, 2005, communicating ex parte and ultra vires on matters of law to the detriment of the Plaintiff, and conspiring to effect on December 9, 2005 an ex parte ultra vires contempt, bodily commitment order, and arrest warrant against him. Such conduct, under color of state law, has resulted in the Plaintiff's loss of civil rights.

29. All Defendants, in concert, under color of state law, caused the Plaintiff the deprivation of his civil rights under the First, Fifth and Fourteenth amendment.
30. The law on divestiture of state court jurisdiction after proper removal should have been well settled and known to a reasonable person, the Missouri Judiciary, and Missouri state attorneys at the time of the ex parte ultra vires conduct and abuse of judicial arrest power effecting the civil rights violations noted herein.
31. All Defendants knowingly conspired, under color of state law, with deliberate indifference, via the improvident abuse of judicial arrest power, and deprivation of due process and liberty interest when they initiated and continued ex parte ultra vires state court proceedings to deprive the Plaintiff of his civil rights.
32. The conduct of all Defendants, under color of state law, to deprive the Plaintiff of his liberty interest and due process rights under the First, Fifth and Fourteenth Amendments is actionable.

COUNT III
CONSPIRACY TO DEPRIVE PERSONS OF EQUAL PROTECTION OF THE LAWS

33. Plaintiff alleges and incorporates 1-20 above.
34. All Defendants conspired, and perhaps with others currently unknown to this Plaintiff, to deprive the Plaintiff of equal protection of the laws and of equal privileges and immunities under the laws, as further set forth in Count I above. The conspirators, all acting under color of

state law, committed some acts in furtherance of the conspiracy which included participating in ex parte judicial hearings, communications, and issuance of contempt order, commitment order and arrest warrant to the Jackson County Sheriff's Department for the arrest of the Plaintiff.

35. As a result of the conspiracy, the Plaintiff was injured by Defendants in his ability to associate with family, friends, professional colleagues; to travel into and out of the state of Missouri; to work at his profession; he suffered loss to his reputation; was deprived of his right to the exercise of his pursuit of happiness and; was deprived of the rights and privileges as a citizen of the United States, as are more fully set forth in Count I.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

36. Plaintiff alleges and incorporates 1-20 above.
37. The conduct of all Defendants was odious, perverse, and outrageous, to relish in the delight of repeated ex parte ultra vires conduct to deprive the Plaintiff his freedom and to utterly disregard and flaunt voluminous federal law denying them the authority to which they exercised self aggrandizement of jurisdiction.
38. All Defendants, willfully, wantonly, and with reckless abandon, lacking authority, and being fully aware of the damage such conduct would inflict on the personal and professional reputation

of the Plaintiff as well as the emotional distress such conduct would inflict proceeded to improperly wield and abuse their arrest power.

39. As a result of the conduct of all Defendants noted above the Plaintiff has suffered severe emotional and psychological distress relating to fear of imprisonment, loss of emotional bonding with his children and his wife's grandchild, loss of personal and professional reputation and loss of present and future professional opportunities.

III. Relief

INJUNCTIVE RELIEF

40. Plaintiff alleges and incorporates 1-39 above.

41. The Plaintiff has and continues to be subject to the ultra vires arrest warrant that denies him his liberty interest and constitutional rights of association, travel and due process, inter alia.

42. The Plaintiff is entitled to temporary and permanent injunctive relief from the conduct of the Defendants which resulted in the deprivation of his civil rights.

WRIT OF MANDAMUS

43. Plaintiff alleges and incorporates 1-39 above.

44. This Court is authorized to issue a Writ of Mandamus to the Sixteenth Judicial Circuit Court of Missouri to quash its ultra vires December 9, 2005 contempt/ commitment order, to quash the state arrest warrant in effect against the Plaintiff, and to expunge all records since

proper removal from State court on March 24, 2005.

45. The state court lacked jurisdiction from the time of removal to federal court, as the case was dismissed, not remanded.

IV. Do you claim the wrongs alleged in your complaint are continuing to occur at the present time?

Yes. According to the Missouri CaseNet ® web site, the arrest warrant remains in effect.

V. Do you claim actual or punitive monetary damages for the acts alleged in your complaint?

Yes

Count II, judgment against each Defendant, jointly and severally for compensatory damages in excess of $ 1,000,000; punitive damages for each Defendant's wilful, outrageous and malicious conduct to be in excess of $3,000,000; the costs of his suit and attorneys' fees; nominal damages, and such other and further relief as the Court may deem proper.

Count III, judgment against each Defendant, jointly and severally for compensatory damages in excess of $1,000,000; punitive damages for each Defendant's wilful, outrageous and malicious conduct to be in excess of $3,000,000; the costs of his suit and attorney's fees; nominal damages, and such other and further relief as the Court may deem proper.

Count IV, judgment against each Defendant, jointly and severally for compensatory damages in excess of $1,000,000; punitive damages for each Defendant's wilful, outrageous and malicious abuse of arrest power in excess of $3,000,000; the costs of his suit and attorneys' fees; nominal damages, and such other and further relief as the Court may deem proper.

VI. Counsel

Do you have an attorney to represent you in this civil action?

No.

A. Have you made any effort to contact a private attorney to determine if he or she would represent you in this civil action?

No

B. If you answered yes, state the names and addresses of the attorneys contracted, and give the results of those efforts.

C. If you answered no, state your reasons why no such efforts have been made.

Plaintiff was driven to the verge of bankruptcy by support orders on three separate occasions: June 1998, May 2001, and February 2005. Since March 2005, Plaintiff has represented himself in court proceedings to limit attorneys' fees.

VII. Administrative Procedures

A. Have the claims which you make in this civil action been presented through any

type of Administrative Procedure within any government agency?

Yes

B. If you answered yes, state the date your claims were so presented, how they were presented, and the result of that procedure.

1. On January 23, 2006, Harold-Ray: Stanley petitioned the Missouri Western District [State] Court of Appeals for a remedial writ against the Defendants.
2. On January 24, 2006, the Missouri Western District [State] Court of Appeals denied the petition without a reasoned opinion. (Appendix E: Missouri Court of Appeals, Western District, WD66453 Order)
3. On February 23, 2006, Harold-Ray: Stanley petitioned the Missouri Supreme Court for a remedial writ against the Defendants, restating the arguments presented to the appeals court.
4. On April 11, 2006, the Missouri Supreme Court denied the petition without a reasoned opinion. (Appendix F: Clerk of the Supreme Court, SC87524 Order)
5. Plaintiff thereby exhausted all potential State court remedies for the ex parte ultra vires civil rights violation conduct of the Defendants.

C. If you answered no, give the reasons, if

any, why the claims made in this action have not been presented through Administrative Procedures.

Signed this 6th day of September, 2006

Harold-Ray: Stanley
All rights reserved

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

In re Marriage of: HAROLD STANLEY, Plaintiff.
v. MARCIA E. STANLEY, et al., Defendants.
Case No. 05-281-CV-W-GAF

___ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the claims asserted in Harold Stanley's "removal complaint" must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

Patricia L. Brune
Clerk
/s/ Tracy L. Diefenbach
(by) Deputy Clerk

October 25, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

In re Marriage of: HAROLD STANLEY, Plaintiff.
v. MARCIA E. STANLEY, et al., Defendants.
Case No. 05-281-CV-W-GAF

ORDER

Presently before the Court is a Motion to Dismiss filed by the Defendant, Marcia E. Stanley. (Doc. #4). The Defendant alleges that this case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Id. The Plaintiff, Harold Stanley, who is proceeding pro se, opposes this Motion arguing that the Constitutional violations he asserts in his "removal complaint" confers subject matter jurisdiction on this Court pursuant to 28 U.S.C. § 1331. (Doc. #6). Because the Court does not have original subject matter jurisdiction over the state court action filed by Marcia Stanley which Harold Stanley purports to remove, the Motion to Dismiss is GRANTED.

DISCUSSION

I. Facts

On August 8, 1996, Harold Stanley filed a Petition for dissolution of his marriage to Marcia Stanley in the 16th Judicial Circuit Court of Jackson County, Missouri, Case Number 16DR96-08993. (Doc. #4). Harold and Marcia Stanley's marriage was subsequently dissolved by Order of the court. Id. Harold Stanley failed to comply with the terms of the

dissolution, prompting Marcia Stanley to file at least two motions for civil contempt in the 16th Judicial Circuit Court of Jackson County, Missouri, Case Numbers 16DR-08993-02, and -04. Id. Case Number 16 DR-08993-02 was initiated by Marcia Stanley on January 5, 2004 and Harold Stanley was personally served with a summons on February 6, 2004. Case Number 16DR-08993-04 was initiated by Marcia Stanley on February 17, 2005 and Harold Stanley was personally served with a summons on February 25, 2005. No federal claims were asserted in either the original Petition for dissolution of marriage or the subsequent motions for civil contempt. (Doc. #4).

On March 24, 2005, Harold Stanley filed a "removal complaint" purporting to remove these civil contempt proceedings, Case Numbers 16DR96-08993-02 and -04, to federal district court. (Doc. #1, Attach. 1). In his "removal complaint," Harold Stanley claims that the Missouri Dissolution of Marriage Maintenance Provisions (Mo. Rev. Stat. § 452.335 et al.) violate the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution because they infringe upon his "personal decisions relating to marriage" and his "fundamental right to privacy to dissolve his marriage." (Doc.#1). Harold Stanley further alleges that the Missouri alimony statute functions "as state imposed legal coercion to effect involuntary servitude" and, therefore, violates the Thirteenth Amendment of the U.S. Constitution because it "denies him his property rights and permanently enslaves him to labor for the benefit of his former spouse." Id.

Harold Stanley claims that his assertion of various Constitutional violations raises a federal question and, therefore, confers subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. (Doc. #6). Marcia Stanley contends original subject matter jurisdiction premised on 28 U.S.C. §1331 does not exist over the removed action because there were no federal questions raised in Case Numbers 16DR- 08993-02, and -04. (Doc. #4).

II. Standard and Legal Analysis

An action may be removed by a defendant where the case falls within the original subject matter jurisdiction of the federal district courts. 28 U.S.C. § 1441(a). District courts have original subject matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The removing party bears the burden of establishing federal subject matter jurisdiction. Green v. Ameritrade, Inc., 279 F.3d 590, 595 (8th Cir. 2002).

In analyzing the propriety of removal, the Court must begin by applying the "well-pleaded complaint rule" which provides:

> Whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance or defenses which it is thought

the defendant may interpose.

Taylor v. Anderson, 234 U.S. 74, 75-76 (1914). The well-pleaded complaint rule makes the plaintiff "the master of the claim and he or she may avoid federal jurisdiction by exclusive reliance on state law." Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).[1] Accordingly, where the face of the complaint does not invoke or establish federal court jurisdiction, a defendant is not entitled to remove a case to federal court on the basis of a counterclaim over which the federal court has jurisdiction. McClymonds v. Brandle, 171 F. Supp. 457, 457-58 (E.D. Mo. 1959).

Here, Harold Stanley asserts that the Constitutional violations he asserts in his "removal complaint" are sufficient to confer original subject matter jurisdiction over the civil contempt proceedings filed by Marcia Stanley in the 16th Judicial Circuit Court of Jackson County, Missouri. However, upon application of the well-pleaded complaint rule, this Court finds that it does not have original subject matter jurisdiction over Marcia Stanley's civil contempt proceedings because no federal question was raised in either Case Number

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1 *See* The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25 (1913) ("The party who brings a suit is master to decide what law he will rely upon."); Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 809, n. 6 (1986) ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced."); Great North R. Co. v. Alexander, 246 U.S. 276, 282 (1918) ("The plaintiff may by the allegations of his complaint determine the status with respect to removability of a case.").

16DR-08993-02 or 16DR-08993-04. Accordingly, removal is not proper.

In addition to removal being improper, the Court does not have subject matter jurisdiction to hear the claims asserted in Harold Stanley's "removal complaint." Harold Stanley has asserted these Constitutional claims in response to the civil contempt proceedings filed by Marcia Stanley. Marcia Stanley's civil contempt proceedings, Case Number 16DR-08993-02 and -04, arise out of Harold Stanley's failure to comply with the terms of the Order dissolving the couple's marriage. The domestic relations exception, first articulated in Barber v. Barber, 62 U.S. (1 How. 582, 584 (1859), divests the federal courts of jurisdiction over any action for which the subject is a divorce, allowance of alimony, or child custody. Kahn v. Kahn, 21 F.3d 859, 861 (8th Cir. 1994) *citing* Ankenbrandt v. Richards, 504 U.S. 689 (1992). Furthermore, even where a cause of action "closely relates to but does not precisely fit into the contours of an action for divorce, alimony or child custody, federal courts generally will abstain from exercising jurisdiction." Id. The subject of the present case is the order dissolving Harold and Marcia Stanley's marriage. Accordingly, this Court does not have subject matter jurisdiction over this action.

CONCLUSION

Removal is improper in this case because this Court does not have original subject matter jurisdiction over Marcia Stanley's actions for civil contempt. Furthermore, the domestic relations

exception completely divests this Court of jurisdiction over any action where the dispute concerns a marriage dissolution or "closely relates" to a marriage dissolution. Accordingly, the claims asserted in Harold Stanley's "removal complaint" must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

IT IS SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: October 25, 2005

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

HAROLD STANLEY, Plaintiff,
vs. MARCIA E. STANLEY, et al., Defendants.
Case No. 05-0281-CV-W-GAF

____**Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X___**Decision by Court.** This action came before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that

Pursuant to this Court's October 25, 2005 Order divesting itself of jurisdiction (Doc. #12), the Court considers this case to have been remanded.

Patricia L. Brune
Clerk
/s/ Tracy L. Diefenbach
(by) Deputy Clerk

January 16, 2007

28 USC Sec. 1446
01/05/2009
TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART IV - JURISDICTION AND VENUE
CHAPTER 89 - DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS
Sec. 1446. Procedure for removal
-STATUTE-

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended

pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c)(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that

removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the

International Trade Commission under section 337 of that Act.

(downloaded from http://uscode.house.gov/uscode.cgi on July 19, 2010)

28 USC Sec. 1447

01/05/2009

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART IV - JURISDICTION AND VENUE

CHAPTER 89 - DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec. 1447. Procedure after removal generally

-STATUTE-

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State

court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(c) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

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42 USC Sec. 1983

01/05/2009

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 - CIVIL RIGHTS

SUBCHAPTER I - GENERALLY

Sec. 1983. Civil action for deprivation of rights

-STATUTE-

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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